



## Filing Receipt

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**PROJECT NO. 51841**

<b>REVIEW OF 16 TAC §25.53</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>RELATING TO ELECTRIC SERVICE</b>	<b>§</b>	<b>OF TEXAS</b>
<b>EMERGENCY OPERATIONS PLANS</b>	<b>§</b>	

**TEXAS PUBLIC POWER ASSOCIATION'S RESPONSE  
TO THE PROPOSAL FOR PUBLICATION**

The Texas Public Power Association (TPPA) appreciates the opportunity to respond to the proposal for publication (PFP) by the Public Utility Commission of Texas (Commission) regarding its rulemaking to implement Tex. Util. Code § 186.007, relating to Public Utility Commission Weather Emergency Preparedness Reports. These comments are submitted on behalf of TPPA and do not necessarily reflect the opinions of any individual TPPA member.

Formed in 1978, TPPA is the statewide association for the 72 municipally-owned utilities (MOUs) in Texas. TPPA membership also includes several electric cooperatives and joint actions agencies, as well as the Lower Colorado River Authority. TPPA members serve urban, suburban, and rural Texas and vary in size from large, vertically-integrated utilities to relatively small distribution-only systems. We are proud to serve approximately 5.1 million Texans across the state. Most of our members operate within the Electric Reliability Council of Texas (ERCOT) region,<sup>1</sup> though several are located within either the Southwest Power Pool (SPP) or Midcontinent Independent System Operator (MISO) region. MOUs offer a long track record of stability, and we serve an essential role in providing secure and reliable power to the wholesale electricity markets in these regions, including ERCOT. Many of our member systems have been providing stable and reliable electric power to communities in Texas for over 100 years, and collectively, our members provide more than 13,800 MW of generation and maintain nearly 8,500 miles of high-voltage transmission assets.

On December 1, 2021, the Commission filed the PFP in the Texas Register, seeking comments by January 4, 2022. These comments are timely filed.

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<sup>1</sup> 70% of Lubbock Power and Light's customers were moved to the ERCOT region on May 29 and 30, 2021. The remainder will be transitioned from SPP in 2023.

## **I. The Role of MOUs in Emergency Planning and Response**

MOUs have a unique role in emergency planning and response. Because an MOU is directly connected through its governance structure to a municipality, during an emergency, an MOU is a key response unit in a way that another electricity provider that does not have such a relationship may not be. At all times, and especially during an emergency situation, an MOU has a direct connection and responsibility to support the needs of the municipality that it serves that has jurisdiction and authority over it. Accordingly, MOUs have developed several voluntary standards and best practices. For instance, the American Public Power Association, TPPA's federal counterpart, maintains several guidebooks on emergency response, including the Restoration Best Practices Guidebook<sup>2</sup> and the All-Hazards Guidebook.<sup>3</sup> Moreover, many Texas MOUs are part of APPA's mutual aid network and/or the Texas-based Municipal Electric Service Association's mutual aid network. These networks and processes have helped MOUs better serve their communities in emergency situations.

## **II. Comments on PFP**

TPPA appreciates the Commission's work on the PFP and recognizes the importance of adequate plans for generation and transmission entities in operating during emergencies and protecting the health and safety of the electric grid and the people it serves. TPPA requests the Commission make additional clarifications and modifications to better effectuate the implementation of the statutory changes made in Senate Bill 3.

TPPA first notes that ERCOT already maintains a requirement that certain entities provide copies of emergency operations plans (EOPs),<sup>4</sup> and ERCOT's timeline for submittal of EOPs would conflict with the timelines proposed in this rule. TPPA recommends that, coincident with the adoption of this rule, the Commission direct ERCOT to sunset or amend its rules regarding EOPs to ensure that its rules do not conflict with the Commission's.

**Proposed 25.53(a)** would apply the rule to all MOUs. TPPA recommends that the Commission modify the applicability of this rule to encourage, but not require, distribution-only MOUs to file their EOPs with the Commission. TPPA is concerned that applying this rule as

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<sup>2</sup> See <https://www.publicpower.org/resource/restoration-best-practices-guidebook>

<sup>3</sup> See <https://www.publicpower.org/resource/all-hazards-guidebook>

<sup>4</sup> See ERCOT Protocols § 3.21 and ERCOT Nodal Operating Guide § 3.7(6)-(7) and Section 8, Attachment L: Emergency Operations Plan.

proposed would present a substantial regulatory burden on distribution-only entities, as this rule requires an extensive amount of information and very detailed annexes provided in a specific format. This may result in many smaller MOUs being forced to decouple existing city-wide EOPs to create utility-specific EOPs for the purposes of this rule, which could decentralize its emergency response, creating more confusion in an emergency situation. Importantly, every distribution-only MOU is served by a transmission entity that will be required to file an EOP, including, under the PFP, a load shed annex. Therefore, the Commission's interest in ensuring a reliable grid during emergencies would still be maintained, while the regulatory and administrative burden on entities and Commission staff fall to the entities most responsible for emergency response.<sup>5</sup>

**Proposed 25.53(b)(3)** would define emergency as, in relevant part, "any incident resulting from an imminent hazard or threat that endangers life or property or presents credible risk to the continuity of electric service." TPPA believes this definition is overly broad. By isolating language relating to the continuity of electric service behind an "or," the definition could apply to emergencies unrelated to the continuity of electric service, which could create ballooning EOPs that go well beyond the stability of the electric grid.<sup>6</sup> TPPA is also concerned that this language could be read to apply to incidental, limited, and brief interruptions of service that do not result from or cause emergency conditions.<sup>7</sup> TPPA recommends that the definition be revised to read as follows: "any incident relating to an imminent hazard or threat that ~~endangers life or property or~~ presents credible risk to the sustained continuity of electric service."<sup>8</sup> TPPA also recommends this defined term be limited to an emergency or disaster declared by local, state, or federal government; ERCOT; or a Reliability Coordinator that is applicable to the entity. At present, the proposed definition of emergency is structured to include, but would not be limited to that circumstance. TPPA believes that these entities will declare states of emergency or disaster as appropriate, and

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<sup>5</sup> Additionally, TPPA notes that this approach would align with the Commission's weatherization requirement approach, which only applies to generation entities and transmission service providers.

<sup>6</sup> For instance, while an active shooter event is an imminent hazard or threat that endangers life, it lies outside the scope of addressing direct risks that would impede continuity of electric service as contemplated in the PFP.

<sup>7</sup> For example, many entities that would be subject to the rule may often experience brief and localized outages resulting from small animals seeking warmth or nesting in a transformer or substation equipment; utility staff are very familiar with methods to quickly resolve these issues and such events are not connected to sustained outages that would have a substantial effect on life and property.

<sup>8</sup> TPPA notes that the stricken language is already incorporated in a more expansive form in the definitions for both "Hazard" and "Threat."

the Commission should not seek to include other events as emergencies that do not rise to that level.

**Proposed 25.53(c)(1)** would require all entities to file an EOP by April 1, 2022. TPPA reads the draft rule and its use of “an EOP” to require the collation of an entity’s emergency procedure documents into a single document, using a template that matches, on a 1:1 basis, the Commission’s rule.<sup>9</sup> Given the breadth of the requirements together with a rule implementation timeline of less than three months from the filing of these comments, TPPA suggests, as a first step, modifying the language to require the entities subject to this rule to submit their existing EOPs. The Commission, through its staff or a consultant, could then review an entity’s EOP and provide a gap analysis with recommendations for improvements. Entities would then be able to update and make appropriate and necessary changes. Such an approach will be effective, targeted, and provide meaningful and actionable next steps that will serve to maintain the reliability of the grid during emergency conditions without creating substantial regulatory burdens.

On a longer-term basis, TPPA further suggests allowing flexibility for nonsubstantive changes to the form of the filing, such as moving information into an EOP proper instead of an annex, so long as the filing entity clearly indicates where the information is located.

TPPA proposes the following language to be included as a new subsection (b-1):<sup>10</sup> “By April 1, 2022, all entities subject to this rule must file their existing EOPs. If an entity does not currently maintain a written EOP, it must create and file one that substantially complies with this rule by April 1, 2022. An entity must modify its EOP to comply fully with this rule and file it by February 15, 2023, as described below in subsection (c). While all required elements of an EOP along with relevant annexes must be included in an entity’s filing, an entity may modify the structure and formatting of its EOP, provided that the filing entity clearly indicates where the required information is located.”

**Proposed 25.53(c)(1)(A)** would require all entities to file an unredacted EOP, in its entirety, with the Commission. TPPA believes that there may be an error in this provision that

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<sup>9</sup> In response to Winter Storm Uri, many entities gave additional prominence to their winter weather emergency preparedness plans. The proposed rule would seem to require these procedures be detached from an entity’s EOP proper and instead included as an annex, attached to an EOP that describes only universal procedures that would apply to any kind of emergency. This level of reformatting and reordering would take a nontrivial amount of time, particularly for smaller entities.

<sup>10</sup> TPPA would not oppose renumbering the section to make this provision into subsection (c) and currently proposed subsection (c) into subsection (d). TPPA proposes the new (b-1) label only for the purposes of labelling these comments so as to avoid confusion regarding its comments for the remainder of the rule.

would conflict with the statutory language of Tex. Util. Code § 186.007. Tex. Util. Code § 186.007(f) draws a very particular line:<sup>11</sup>

The emergency operations plans submitted for a report described by Subsection (a-1) and any additional plans submitted under Subsection (e) are public information except for the portions of the plan considered confidential under Chapter 552, Government Code, or other state or federal law. If portions of a plan are designated as confidential, **the plan shall be provided to the commission in a redacted form for public inspection with the confidential portions removed. An entity within the ERCOT power region shall provide the entity's plan to ERCOT in its entirety.**

TPPA suggests alternative language to better track the provisions of the statute and avoid inadvertent conflicts between the rule and the statute. Specifically, TPPA recommends that the Commission strike the proposed language of 25.53(c)(1)(A) and replace it with the following language: “For portions of a plan that are designated as confidential, an entity must provide its plan to the commission in a redacted form for public inspection with the confidential portions removed.” TPPA would support including a provision allowing the Commissioners or their designee to make an in-camera examination of an entity’s unredacted EOP at the entity’s main office upon request.

**Proposed 25.53(c)(1)(C)** would require annual EOP filings to include after-action reports on any incidents that caused the EOP to be activated in the year prior. TPPA recommends that this provision be deleted for several reasons. First, the provision’s second element, requiring that an entity provide an outline of changes to its EOP after an emergency event, is better covered by proposed 25.53(c)(4)(C), which requires an entity to file an updated EOP within 30 days of a significant change, making this provision untimely and largely redundant. The other element, requiring a summary of lessons learned, is best accomplished by briefing the Commission, either individually or at an open meeting, where a broader discussion can be held.<sup>12</sup> This approach will

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<sup>11</sup> Tex. Util. Code § 186.007(f) (emphasis added).

<sup>12</sup> In the past, the Commission regularly held summits after major events, with representatives of all market segments in attendance. See *Review of Summer 2019 ERCOT Market Performance*, Project No. 49852, Workshop Agenda (Oct. 4, 2019) and *Issues Related to the Disaster Resulting from Hurricane Harvey*, Project No. 47552, Copies of Handouts Provided to the Commissioners at the September 28, 2017 Open Meeting (Oct. 11, 2017).

also increase transparency and allow for broad public participation.<sup>13</sup> Requiring every entity to produce an annual set of after-action reports for every activation of the EOP will not likely assist in the Commission's timely understanding of how both an individual entity and the industry as a whole responded to an emergency. After an emergency that requires the activation of an EOP, the Commission will likely want information as soon as possible. Bundling these reports in an annual February filing means that the Commission will likely not receive the best information as it is finalized.

This approach will also better protect important security information. A set of filed after-action reports and changes to an EOP may form a blueprint for action for bad actors, while a public hearing ensures that the Commissioners receive briefing on their key questions and concerns, without exposing the vulnerabilities of the grid.

**Proposed 25.53(c)(4)** would require entities to file updated EOPs with the Commission "if commission staff determines that the entity's EOP on file does not contain sufficient information to determine whether the entity can provide adequate electric service through an emergency," or "in response to feedback provided from commission staff." These requirements do not align with statutory text, as Tex. Util. Code § 186.007(b) grants the authority to require entities to file updated EOPs to the Commission, not its staff.

While TPPA appreciates the ability to informally coordinate and communicate with Commission staff, the staff cannot speak for the Commission, and the rule would appear to allow a single member of Commission staff, regardless of seniority or authority, to require an entity to file a revised plan. This may also result in simultaneous, conflicting instructions from multiple staffers, which would create an untenable compliance position for the entity receiving such instructions. Further, it presents due process concerns for the Commission to delegate its authority to any staffer at the agency.

Given the importance of an EOP in emergency response, any changes to the document are a heavy endeavor, requiring many authorizations through multiple channels. As noted above, this is even more work for MOUs, given their direct connection to a local government. As such, TPPA believes that it is more appropriate for any such changes to be conducted through a formal

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<sup>13</sup> While MOUs are subject to the Public Information Act, some privately-owned entities may be less forthcoming about any lessons learned if these documents could be used as collateral discovery to benefit private litigation efforts. TPPA also notes that such a regulatory repository may create real burdens on the Commission's public information team.

proceeding. TPPA recommends that this provision be revised to “An entity must file an updated EOP if the commission ~~staff~~ determines, after notice and an opportunity for a hearing, that the entity's EOP on file does not contain sufficient information to determine whether the entity can provide adequate electric service through an emergency.”<sup>14</sup> This will ensure that any changes to an EOP that the Commission deems necessary are carried out through a well-known and established process. This language change will also ensure that the Commission has the opportunity to review and publicly discuss the information it wishes to see contained within an EOP and provide broader guidance, if desired, as opposed to a more ad hoc approach.

**Proposed 25.53(c)(5)** would require ERCOT to maintain a current, unredacted EOP for review by the Commission or its designee. Given that ERCOT will have access to unredacted EOPs from market participants, TPPA believes that ERCOT’s unredacted EOP should be provided to those same market participants. Due to ERCOT’s essential role in continuity of electric service, TPPA believes that its EOP should be made available to entities subject to this rule. In order to maintain confidentiality, ERCOT could post its EOP on its Market Information System, where it already provides a substantial amount of ERCOT-protected confidential material. TPPA requests that the proposed provision be modified to require that ERCOT securely provide this information to market participants to whom this rule is applicable. In addition, ERCOT should be required to file a redacted EOP with the Commission for public inspection.

**Proposed 25.53(d)** would require an EOP to include an approval and implementation section, a distribution log, and an affidavit attesting to training, drills, and outside distribution. TPPA believes that this reporting requirement, if maintained, should be separate from the EOP itself. Including these provisions as part of an EOP results in a timing issue – the EOP must be finalized to be distributed, but it cannot be finalized until it is distributed. Instead, TPPA recommends that the requirements of proposed 25.53(d)(1), (2), and (4) be maintained and provided separately from the EOP itself, rather than as part of it.

**Proposed 25.53(d)(4)** would require entities to file an affidavit from the entity’s highest-ranking representative, official, or officer with binding authority, attesting to a variety of specifics. As noted in other rulemakings,<sup>15</sup> this requirement is particularly unclear as to how it applies to

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<sup>14</sup> To the extent that the Commission’s concern relates to critical infrastructure, the Commission may be able to hold a closed hearing under Tex. Gov’t Code § 551.089.

<sup>15</sup> See *Rulemaking to Establish Electric Weatherization Standards*, Project 51840, Texas Public Power Association’s Comments on Proposal for Publication at 6 (Sept. 16, 2021).



MOUs, and it could be interpreted to require the signature of a city mayor or city council. The Commission provided a helpful clarification in a separate rulemaking,<sup>16</sup> and TPPA would appreciate this same clarification in this rulemaking.

**Proposed 25.53(d)(4)(E)** would require that affidavit to include an affirmation that the entity maintains a business continuity plan, but the rule provides no guidance as to the scope or what this business continuity plan would entail. TPPA requests additional clarification as to what the Commission intends the business continuity plan to include.

**Proposed 25.53(d)(4)(F)** would require that affidavit to include an affirmation that the entity's emergency management personnel have received National Incident Management System training, specifically IS-700.a, IS-800.b, IS-100.b, and IS-200.b. FEMA now maintains newer versions for all of these courses. At present, the relevant courses are IS-700.b, IS-800-d., IS-100.c, and IS-200.c. FEMA does not offer previous versions of these courses. TPPA recommends that these references be updated to the title of the course, rather than a specific course number. This provision could otherwise become quickly outdated or stale.

In addition, the rule would require this training of all "emergency management personnel who are designated to interact with local, state, and federal emergency management officials during emergency events." TPPA notes that, oftentimes, personnel other than emergency management personnel interact with the listed emergency management officials, and TPPA requests that the Commission clarify that these non-emergency management personnel<sup>17</sup> would not be required to undergo this training.

**Proposed 25.53(d)(5)** would require entities with transmission or distribution service and entities with generation operations to file a communications plan that describes the procedures for handling complaints and for communicating with the public and the media. TPPA agrees that a communications plan should be considered part of an entity's EOP, as customers can be better prepared if they understand an entity's communications plan. However, given that this plan is part of an EOP, it should be more focused on the specific methods and forms of emergency communications, rather than day-to-day customer interactions, such as how to file a complaint. TPPA believes that this provision should allow flexibility for an entity to communicate with the

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<sup>16</sup> *Rulemaking to Establish Electric Weatherization Standards*, Project 51840, Order Adopting New 16 TAC §25.55 as Approved at the October 21, 2021 Open Meeting at 41-42 (Oct. 26, 2021).

<sup>17</sup> For MOUs, this can include mayors, city council members, and utility general managers.

public in a manner that is responsive to the fluid nature of an emergency event, and the Commission should avoid requiring one-size-fits-all approaches to communications plans.

TPPA recommends removal of the provision allowing the Commission to seek revisions to this plan. A state agency requiring revisions to a communications plan, on pain of penalties if the plan is deemed inadequate, presents very serious First Amendment concerns. Entities should be able to freely communicate to the public or media without Commission oversight, and TPPA is deeply concerned that the Commission would seek to regulate these interactions. TPPA has similar concerns with proposed **25.53(e)(1)(C)(iii)**, which would require an annex detailing the process for communicating with critical load customers.

**Proposed 25.53(d)(5)(B)** would require a communications plan to include provisions regarding a generation entity's communications with fuel suppliers. How a generation entity communicates with its fuel suppliers is competitively sensitive information, and most, if not all, fuel suppliers are outside the Commission's jurisdiction. It is unclear what benefit this reporting would serve if the Commission cannot require any action from the fuel suppliers. TPPA recommends deleting this proposed requirement in full.

**Proposed 25.53(e)** would require several annexes to be filed, depending on applicability. It appears that the rule would require separate annexes for transmission and distribution facilities and generation resources, as these requirements are listed as distinct annexes. TPPA notes that several of these reporting requirements may result in duplicative reporting, particularly in the case of vertically integrated utilities, including many MOUs. For instance, proposed 25.52(e)(1)(D) requires a pandemic and epidemic annex from an entity that operates transmission and distribution facilities, while proposed 25.52(e)(2)(E) requires a pandemic and epidemic annex from an entity that operates generation resources. If an entity operates both kinds of facilities, as many MOUs do, these annexes would likely be very similar, if not identical. Requiring a distinct annex for each could result in an unnecessary separation of responsibilities and creates version control problems. TPPA suggests that the rule include provisions allowing for the flexibility to produce a single annex that covers both types of facilities, provided that the filing entity clearly indicates that the annex covers both.

**Proposed 25.53(e)(1)(A)(i)** would require a transmission and distribution entity to file a cold weather emergency annex that includes "operational plans intended to mitigate the hazards of a cold weather emergency, separate and distinct from the weather preparation standards required

under §25.55.” TPPA requests clarification on the meaning of the last clause of this section. It is unclear whether the reference to “separate and distinct” is meant to mean separate and distinct operational plans or separate and distinct weather emergencies. If the intent is for the former interpretation, it is not clear how two sets of plans would not be highly duplicative. In this scenario, the distinctness criterion is particularly troubling. Emergency response suffers when two competing plans are followed, and to the extent that the proposed rule suggests that entities prepare two different procedures for response, the Commission should remove this provision. If the intent is for the other possible interpretation, it is not clear what kinds of cold weather emergencies entities should plan for, but not weatherize for. TPPA has similar concerns with **proposed 25.53(e)(1)(B)(i)**, regarding a transmission and distribution hot weather emergency annex, as well as **proposed 25.53(e)(2)(A)(i)** and **(B)(i)**, which require generation entities to file cold and hot weather emergency annexes, respectively.

**Proposed 25.53(e)(1)(A)(iii)** would require an annex that itself requires a transmission and distribution entity to hold pre- and post-cold weather emergency meetings. While TPPA certainly agrees with holding post-event meetings, pre-event meetings are not always possible. TPPA recommends modifying this provision to require pre-event meetings only if feasible. TPPA has similar concerns with **proposed 25.53(e)(1)(B)(iii)**, regarding transmission and distribution pre- and post-hot weather emergency meetings, as well as **proposed 25.53(e)(2)(A)(iv)** and **(B)(iii)**, which would require generation entities to hold pre- and post-cold and hot weather emergency meetings. It is also unclear whether holding these meetings, as required by an entity’s EOP, would be considered the activation of an EOP, which would itself generate additional reporting requirements.<sup>18</sup>

**Proposed 25.53(e)(1)(C)** would require a load shed annex. TPPA notes that the Legislature recently affirmed that the Commission must provide discretion for entities to prioritize power delivery and power restoration of critical customers.<sup>19</sup> By requiring the reporting of load shed procedures and load restoration, where, in the proposed rule, Commission staff would be empowered to require revisions and recommend penalties if these revisions are not made, this provision appears to conflict with statutory language. TPPA suggests deleting the requirement for

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<sup>18</sup> This would be particularly burdensome if an expected event did not become an emergency (for instance, if a hurricane’s track swings before landfall). In such a scenario, if following this provision is considered “activating” an EOP, the PFP would require an entity to provide an after-action report, including lessons learned, for a non-event.

<sup>19</sup> PURA § 38.074(b)(3).

a load shed annex or, in the alternative, removing the language that allows the Commission to seek amendments to this annex.

Additionally, the proposed rule would require a registry of critical load customers. TPPA does not believe Senate Bill 3 authorized the Commission to compile a government registry of members of the public and believes this represents a fundamental customer privacy issue that may prove counterproductive to critical load registration efforts. If a customer knows that their personal information will be reported directly to a state agency, it is possible that fewer customers that would be granted critical status will seek it. Many entities already struggle with customers willingly proffering this personal information, and TPPA recommends the deletion of the registry reporting requirement. Moreover, these lists are regularly reviewed and revised, and it would be an administrative burden to update the EOP each time a customer is added or removed. Providing the list in the EOP may also give customers a false sense of security as critical load status does not necessarily guarantee that they will not be part of a load shed event.

**Proposed 25.53(e)(1)(E)** would require a transmission and distribution wildfire annex.<sup>20</sup> While TPPA agrees that large parts of the state may be at risk for wildfires, this risk is not universal. TPPA recommends that this requirement be limited to transmission and distribution entities serving counties predominantly of “Medium to High Risk” or “High Risk,” as described by Texas A&M Forest Service’s Texas Wildfire Risk Explorer<sup>21</sup> or an alternative source. This change will help utilities focus resources and efforts on actual medium and high-risk incidents.

**Proposed 25.53(e)(4)** lists annexes that ERCOT must include in its EOP. TPPA recommends that any annex required of any EOP of an entity subject to this rule should also be required of ERCOT’s EOP, including the requirement of pre- (where feasible) and post-weather emergency meetings and a wildfire annex.

More fundamentally, TPPA believes that, considering the short time between the anticipated adoption of this rule and the proposed filing date of these EOPs, proposed 25.53(e) should be substantially pared back or deleted entirely. At this juncture, the rule should focus on requiring EOPs so that the Commission can develop the statutorily required weather emergency preparedness report on power weatherization preparedness to the Lieutenant Governor, Speaker of

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<sup>20</sup> TPPA takes no position on this wildfire annex not being required of generation entities or REPs.

<sup>21</sup> The Texas Wildfire Risk Explorer can be found at: <https://wrap.texaswildfirerisk.com/Map/Public/#whats-your-risk>

the Texas House, and members of the Texas Legislature, consistent with the statutory provisions of Tex. Util. Code § 186.007. Many of the annexes that would be required under proposed 25.53(e) do not relate to weather emergency or weatherization preparedness. The primary EOP, as described by proposed 25.53(d), already solicits a great deal of information about weather emergency preparedness, and the Commission's weatherization rule has already proven effective in soliciting detailed weatherization preparedness information.

**Proposed 25.53(f)** would require annual drills of an EOP.<sup>22</sup> TPPA asserts that requiring annual drills is outside the scope of Tex. Util. Code § 186.007, the purpose of which appears to be to improve EOP filings with the Commission to ensure transparency and a common working understanding among all parties involved in an emergency. The Commission should more closely mirror the statutory provisions to focus its rule on a narrowly tailored approach that improves EOP filings and delete this provision entirely. In the alternative, TPPA recommends that this provision be made to not apply to MOUs, as this requirement conflicts with the Commission's limited jurisdiction over MOUs per PURA § 40.004.

**Proposed 25.53(g)** would require an entity to provide updates during an emergency and/or file an after-action or lessons learned report upon request by Commission staff. For the reasons discussed above, TPPA believes that these requests may only properly come from the Commission, not its staff. TPPA also incorporates the comments made above regarding these supplemental reporting requirements.

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<sup>22</sup> To the extent that drills are kept in the rule in some form, TPPA would request clarification as to what sort of exercises would constitute a drill. For example, under the proposed rule, it is not clear whether a tabletop exercise would be considered an "operations-based exercise" as contemplated by the Commission's definition of "drill."

### III. Conclusion

TPPA appreciates the opportunity to submit these comments. TPPA looks forward to working with the Commission, its staff, and the stakeholders on this important rulemaking and this broader discussion in the coming months.

Dated: January 4, 2022

Respectfully,



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**EXECUTIVE SUMMARY OF TPPA'S RESPONSE  
TO THE PROPOSAL FOR PUBLICATION**

TPPA appreciates the Commission's work on the PFP and recognizes the importance of adequate emergency operations plans in protecting the health and safety of the grid and the people it serves. TPPA makes recommendations for several modifications and clarifications below:

- Coincident with the adoption of the rule, the Commission should instruct ERCOT to sunset or amend its rules regarding EOPs to ensure consistency.
- The Commission should encourage, but not require, distribution-only utilities to file their EOPs.
- The Commission should limit its definition of emergency to declared states of disaster or emergency that threaten the sustained provision of electric service.
- In lieu of requiring entities to file an EOP that exactly matches the Commission's proposed template, the Commission should initially require entities to file their current EOPs. This process would more efficiently target reliability and readiness concerns. In the longer term, the Commission should allow for flexible formatting of EOPs, as appropriate, rather than requiring a specific template.
- The Commission should only require a redacted EOP with confidential portions removed to be filed with the Commission. The Commissioners or their designee should also be able to inspect the unredacted EOP on request.
- The Commission should remove a proposed requirement that annual EOPs include after-action reports and instead hold public briefing sessions after an event. This approach would better protect sensitive security information, promote greater public transparency, and provide the Commission with a timelier understanding of an event.
- The Commission should not delegate authority to any member of its staff to require edits to an EOP. If the Commission does make a determination that an EOP is insufficient, it should do so only after notice and opportunity for a hearing.
- The Commission should require ERCOT to file a redacted EOP with the Commission for public inspection and to securely provide an unredacted copy to ERCOT market participants subject to this rule.
- The Commission should move any EOP distribution requirements out of the EOP itself to avoid a timing issue where the EOP cannot be distributed until it is finalized, but it likewise cannot be finalized until it is distributed.
- The Commission should provide clarification as to who it would consider the highest-ranking representative of a MOU to be, similar to previous clarifications in other dockets.
- The Commission should provide additional information about its expectations regarding what a business continuity plan would include.

- The Commission should not require specific FEMA course numbers that will be superseded by newer courses. Second, the Commission should clarify that personnel who are not specifically tasked as emergency response personnel are not required to undergo this training.
- To the extent that the Commission will require EOPs to include a communications plan, the plan should focus on emergency communications, and not non-emergency communications, such as how to file a complaint. Moreover, the Commission should recognize the fluid nature of emergency communications and avoid requiring one-size-fits-all communications plans.
- The Commission should remove language that allows it to require edits to communications plans to customers, including critical load customers, and the media, as regulating these communications represents serious First Amendment concerns. The Commission should remove provisions requiring the filing of communication plans to fuel suppliers, as this requirement presents competitiveness concerns.
- Given the rapid timeline for adoption of the rule, the Commission should strongly consider deleting provisions requiring certain specific annexes. The Legislature drafted this requirement to focus on weather emergency and weatherization preparedness, and other provisions of the proposed rule, coupled with the Commission's new weatherization rule, will adequately address this reporting requirement at this time. Should the Commission decide to keep these annexes in the rule, TPPA makes several suggestions, including requesting flexibility for vertically integrated utilities to merge generation- and transmission- specific annexes where appropriate, as well as other annex-specific comments.
- The Commission should remove provisions requiring drills of an EOP, as these provisions are outside the scope of the Commission's statutory authority.